

### REMARKS

As an initial matter, Applicants wish to thank the Examiner for courtesies extended in this case during the telephonic interviews of December 17 and 20, 2004. During the interviews of December 17 and 20, 2004, Applicants responded to the Office communication of December 10, 2004, as summarized herein.

The Office communication identified five categories of species and required five species elections as follows:

#### Office's First Species Election

The Office required election of one of: A) drug response phenotype, B) drug resistance phenotype, C) disease stage phenotype, D) disease recurrence phenotype, E) disease state phenotype, F) treatment selection phenotype, G) disease diagnostic phenotype, H) drug toxicity phenotype, I) adverse drug response phenotype, or J) an unspecified phenotype with respect to those listed above, as allegedly set forth in claims 6, 11, 32, 33, 34, 35, 36, 37, 38, 39 and 40.

#### Office's Second Species Election

The Office required election of one of: K) marketing diagnostic products that are kits, L) marketing diagnostic products includes marketing a mass spectrometry system, or M) marketing diagnostic products along with a disposable microfluidics device, as allegedly set forth in claims 4, 21 and 26.

#### Office's Third Species Election

The Office required election of one of: N) a collaborator collects samples or O) an unspecified entity collects samples with respect to that listed above, as allegedly set forth in claims 7 and 10.

#### Office's Fourth Species Election

The Office required election of one of: P) polypeptides, Q) small molecules, R) nucleic acids, S) polysaccharides, T) metabolites, U) lipids, or V) an unspecified markers with respect to those listed above, as allegedly set forth in claims 15 and 16.

#### Office's Fifth Species Election

The Office required election of one of W) an unspecified sample preparation step preceding electrophoresis followed by a mass spectrometry platform or X) the step of

preparing samples on a microfluidics device preceding the step of using a mass spectrometry platform, as allegedly set forth in claim 25.

In the telephonic communications of December 17 and 20, 2004, Applicants made the following elections without prejudice or disclaimer and **without traverse**:

Applicants' First Species Election:

G) disease diagnostic phenotype, as it corresponds to claim 38.

Applicants' Second Species Election:

M) marketing diagnostic products along with a disposable microfluidics device, as it corresponds to claim 26.

Applicants' Third Species Election:

N) a collaborator collects samples, as it corresponds to claim 7.

Applicants' Fourth Species Election:

P) polypeptides, as it corresponds to claim 15. With respect to this election, the Examiner confirmed that "polypeptides" includes "proteins," in accordance with the specification, which provides, e.g., on page 4, paragraph 0012, "[i]n preferred embodiments the markers are polypeptides such as proteins . . . ."

Applicants' Fifth Species Election:

X) the step of preparing samples on a microfluidics device preceding the step of using a mass spectrometry platform, as it corresponds to claim 25.

With this election, claims 1, 3, 5, 7-10, 12-20, 22-31, 38, and 41-43 remain pending. Claims 4, 6, 11, 21, 32-37, 39, and 40 are withdrawn, without prejudice or disclaimer, as directed to non-elected species. Applicants reserve the right to consideration of claims to non-elected species upon allowance of a generic claim. Moreover, Applicants preserve any rights to pursue claims to non-elected species in future continuing applications, for example in divisional, continuation and/or continuation-in-part applications. For the Examiner's ease of reference, Applicants also provide herein a complete listing of the claims, including a listing all claims readable on the elected species.

**CONCLUSION**

Applicants submit that the instant application is in condition for allowance and respectfully request allowance of the now pending claims. Should the Examiner have any questions, the Examiner is invited and encouraged to contact the undersigned attorney.

The Commissioner is authorized to charge any fees that may be required in connection with this submission, including petition fees and extension of time fees, and to credit any overpayments to Deposit Account No. 23-2415 (Attorney Docket No. 29191-707).

WILSON SONSINI GOODRICH & ROSATI

Respectfully submitted,

Date: 12/30/04

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